

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LIA WATSON,

Plaintiffs,

v.

STATE FARM FIRE AND  
CASUALTY CO.,

Defendant.

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Case No. 08-11311

Denise Page Hood  
U.S. District Judge

Michael Hluchaniuk  
U.S. Magistrate Judge

**ORDER GRANTING DEFENDANT'S MOTION TO COMPEL  
INSPECTION OF THE PLAINTIFF'S RESIDENCE  
AND DENYING REQUEST FOR ATTORNEY FEES**

This case arises from an incident that occurred in July of 2007 when plaintiff's residence was damaged by water that apparently originated in the plumbing system of the residence. Defendant provided insurance coverage for plaintiff's residence at the time and plaintiff made a claim against that coverage relating to the water damage incident. Defendant denied coverage claiming that the cause of the damage came within an exclusion of the policy. Plaintiff has filed this case claiming that, generally, defendant should have paid the claim against the policy and that defendant did not reasonably investigate the claim before denying it. (Dkt. 1).

Defendant seeks in this motion to conduct a non-destructive inspection of plaintiff's residence for the purpose of obtaining additional information that might be useful to an expert witness relating to the cause of the water damage that is the subject of this lawsuit. (Dkt. 7). Plaintiff objected to this proposed inspection asserting that any expert opinion obtained at this point is not relevant to the question of the reasonableness of the investigation by defendant that was conducted immediately after the claim was made in 2007. (Dkt. 17).

A hearing was held on the motion on August 14, 2008. During the hearing, which was conducted telephonically with counsel for both sides present, the attorneys supplemented the arguments made in the pleadings. Based on the pleadings and the arguments of counsel, the undersigned concludes that the information sought in this discovery request could lead to admissible evidence and therefore, defendant's request comes within the scope of permissible discovery as limited by Rule 26(b). While plaintiff's counsel contends that evidence relating to the cause of the water-based damage to plaintiff's house obtained now is not relevant to the issue of the reasonableness of the investigation done by defendant before denying the claim, the relevant issues in this case, as framed by the complaint and answer, clearly go beyond that and include the ultimate question of what caused the damage to plaintiff's home. The inspection as contemplated by

defendant could lead to admissible evidence relating to the cause of the damage. Therefore, defendant shall be entitled to conduct a non-destructive inspection of plaintiff's home for purposes related to determining the cause of the water-based damage to plaintiff's home in July of 2007. Counsel for both parties agreed during the hearing that they could work out the mechanics of when the inspection would be conducted and they are encouraged to have that accomplished as soon as reasonably possible.

In conjunction with the motion to compel, defendant requested attorney fees relating to the costs of preparing the present motion. In the exercise of discretion, and considering the merits of the arguments of the attorneys in this regard, the award of attorney fees is not appropriate under these circumstances.

Therefore, it is hereby ordered that the motion to compel inspection of plaintiff's residence is **GRANTED** and the request for attorney fees is **DENIED**.

**IT IS SO ORDERED.**

The parties to this action may object to and seek review of this Order, but are required to file any objections within 10 days of service as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not thereafter assign as error any defect in this Order to which timely objection was not made.

Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to

which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Date: August 15, 2008

s/Michael Hluchaniuk  
Michael Hluchaniuk  
United States Magistrate Judge

### **CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Cary R. Berlin, Douglas G. McCray, and Robert L. Mott, Jr., and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: not applicable.

s/James P. Peltier  
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